

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

MELODY A. BAUCOM,)	
)	
Plaintiff,)	
)	
v.)	1:06CV00209
)	
CABARRUS EYE CENTER, P.A.,)	
)	
Defendant.)	

MEMORANDUM OPINION and ORDER

OSTEEN, District Judge

Plaintiff Melody A. Baucom ("Plaintiff") filed this action alleging Defendant Cabarrus Eye Center, P.A. ("Defendant") violated the Family and Medical Leave Act, 29 U.S.C. §§ 2601 et seq. and North Carolina law. Pending before this court is Defendant's motion to strike and dismiss Plaintiff's complaint. For the reasons stated below, the court will deny Defendant's motion as moot.

Defendant, which has not served an answer to the original complaint, filed a motion to dismiss Plaintiff's complaint. On the same day Plaintiff responded to Defendant's motion to dismiss, Plaintiff filed an amended complaint. Under Federal Rule of Civil Procedure 15(a), a party may amend a pleading "as a matter of course at any time before a responsive pleading is served." Fed. R. Civ. P. 15(a). Thus, Plaintiff's amended

complaint was filed rightfully as a matter of course since Defendant has not served a responsive pleading.

The amended complaint now states Plaintiff's claims. Since the first complaint is no longer in effect, Defendant's motion to dismiss seeks dismissal of a superceded complaint, and the court must regard the motion as moot. Standard Chlorine of Del., Inc. v. Sinibaldi, 821 F. Supp. 232, 239-40 (D. Del. 1992) (holding that filing an amended complaint renders a motion to dismiss the original complaint moot); cf. Pure Country, Inc. v. Sigma Chi Fraternity, 312 F.3d 952, 956 (8th Cir. 2002) (holding that the court should rule on a motion for leave to amend a complaint before deciding a motion to dismiss that same complaint because allowing leave to amend renders the motion to dismiss moot).

For the reasons stated above,

IT IS ORDERED that Defendant's Motion to Dismiss and to Strike [4] the complaint is DENIED as moot. Defendant has 20 days from the filing of this memorandum opinion and order in which to file an answer to the amended complaint unless it files a motion to dismiss, which would alter due dates as described in Rule 12.

This the 1st day of September 2006.


United States District Judge